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5 IN THE UNITED STATES DISTRICT COURT  
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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8 BRET BAILEY,  
9 Plaintiff,

10 v.

11 MOUNT DIABLO UNIFIED SCHOOL  
12 DISTRICT,  
13 Defendant.

Case No. 24-cv-00188-CRB

**ORDER ON OFFER OF  
JUDGMENT**

14 Plaintiff Bret Bailey filed a notice of acceptance of an offer of judgment by  
15 Defendant Mount Diablo Unified School District. Notice (dkt. 55). In the notice, Plaintiff  
16 sought to take advantage of an ambiguity that the offered \$20,000 sum was not inclusive of  
17 fees and costs. Id. at 2. While the offer initially states that the sum was inclusive of fees  
18 and costs, a later paragraph says that fees and costs would be “determined by the court.”  
19 Offer (dkt. 55-1) at 2. Defendant disagrees with Plaintiff’s reading of the terms and  
20 contends the offer was “expressly limited to the payment of the sum of \$20,000, which  
21 includes costs and attorneys’ fees.” Objection (dkt. 57) at 2. Plaintiff counters that  
22 Defendant created the ambiguity and that it must be construed against them. Response  
23 (dkt. 58) at 4.

24 The Ninth Circuit has “repeatedly emphasized that Rule 68 offers of judgment are  
25 ‘analyzed in the same manner as any contract.’” Miller v. City of Portland, 868 F.3d 846,  
26 851 (9th Cir. 2017) (quoting Erdman v. Cochise Cty., 926 F.2d 877, 880 (9th Cir. 1991)).  
27 “When construing a contract, federal courts look to applicable state law.” Sloan v. Verily  
28 Life Scis. LLC, No. 24-CV-07516-EMC (EMC), 2025 WL 2597393, at \*5 (N.D. Cal. Sept.


1 8, 2025). Accordingly, this Court will apply California contract law. And under  
2 California law, there is “no contract until there has been a meeting of the minds on all  
3 material points.” Am. Emps. Grp., Inc. v. Emp. Dev. Dep’t, 154 Cal. App. 4th 836, 846  
4 (2007) (emphasis in original). “Mutual intent is determinative of contract formation  
5 because there is no contract unless the parties thereto assent, and they must assent to the  
6 same thing, in the same sense.” Id. (internal citation omitted).

7 The Court determines no valid contract was created from the Rule 68 offer because  
8 there was a lack of mutual assent. The Court identifies two ways to read the offer terms.  
9 First, the phrase “determined by the court” could be viewed as having the Court determine  
10 reasonable fees and costs within the \$20,000 sum. And second, the differences in the  
11 paragraphs could functionally create two separate offers—one that caps at the \$20,000 sum  
12 and one that is \$20,000 plus fees and costs. Under either interpretation, Plaintiff did not  
13 agree to the same material terms that Defendant intended to offer.

14 Accordingly, the parties are ordered to meet-and-confer to discuss whether another  
15 Rule 68 offer is warranted. In the interim, the Court will stay briefing on Defendant’s  
16 Motion for Summary Judgment (dkt. 53).

17 **IT IS SO ORDERED.**

18 Dated: October 28, 2025

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20 CHARLES R. BREYER  
21 United States District Judge  
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